IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14165 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEVENDRABHAI M PATEL

Versus

NEW INDIA ASSURANCE CO LTD.

Appearance:

1. Special Civil Application No. 14165 of 2004

MR NAVIN K PAHWA for Petitioner No. 1-2

MR SHALIN N MEHTA for Respondent No. 1

RULE SERVED for Respondent No. 1,2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 04/05/2005

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate writ, order or direction quashing and setting aside the action of the respondent in renewing the Mediclaim policy for the years 2003-2004 and 2004-2005

with exclusion clause of Knee Joint Replacement as illegal, arbitration and against the settled position of law as laid down by the Division Bench of this Court in Special Civil Application No. 9425 of 2002. By way of amendment application, the petitioner has also prayed for the same benefit for the year 2005-2006 also.

2. Today, when the matter is called out, it is not disputed by the learned advocate appearing for the petitioners that the Division Bench of this Court vide its Judgment and Order dated 5.12.2003 passed in Letters Patent Appeal No. 1028 of 2003 and other cognate appeals while dismissing the same has held as under:

"[1] The insured has an option under the existing mediclaim insurance policy to continue the cover by payment of renewal premium in time in respect of the sum insured.

[2] In case of renewal without break in the period, the mediclaim insurance policy will be renewed without excluding any disease already covered under the existing policy which may have been contracted during the period of the expiring policy. Renewal of mediclaim insurance policy cannot be refused on the ground that the insured had contracted disease during the period of the expiring policy so far as the basic sum insured under the existing policy is concerned.

[3] In cases where the insured seeks an enhancement of the amount of sum insured at the time of renewal, the option to renew will not extend to the amount of such enhancement and renewal in respect thereof will depend upon the mutual consent of the contracting parties.

[4] Renewal of a medical claim insurance policy cannot be refused, despite timely payment of the renewal premium, on the ground that continuance of the cover would become more onerous or burdensome for the insurer due to the insured contracting a covered disease during the period of the existing policy.

[5] The insurer may refuse renewal, even in cases where the insured has an option to renew the policy on payment of the renewal premium in time, on the grounds, such as, misrepresentation, fraud or non-disclosure of material facts that existed at the inception of the contract and would have

vitiated the insurance of the cover at its inception or non-fulfillment of obligations on the part of the insured or any other ground on which the performance of the promise under the contract is dispensed with or excused under the provisions of the Indian Contract Act or any other law or when the insurer has stopped doing business.

[6] The government insurance companies continue to be "State" within the meaning of Article 12 of the Constitution notwithstanding the entry of private companies in the field of general insurance, ending their monopoly by virtue of insertion of Section 24A in the Act of 1972, and they cannot arbitrarily cancel or refuse to renew an existing mediclaim policy."

2.1. In view of the judgment and order passed by the Division Bench of this Court dated 5.12.2003 in aforesaid Letters Patent Appeal No. 1028 of 2003 and other cognate Letters Patent Appeals, the present petition succeeds and the respondent is directed to renew the Mediclaim Policy of the petitioner for the year 2005-2006 without exclusion clause of Knee Joint Replacement.

2.2. At this stage, Shri Shalin Mehta, learned adocate appearing on behalf of the Insurance Company has submitted that against the aforesaid decision of the Division Bench of this Court Special Leave to Appeals are filed before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court has issued the notice and by way of interim relief it is directed that the Insurance Company shall renew the policy without prejudice to the contentions raised in the Letters Patent Appeal.

2.3. Shri Pahwa, learned advocate for the petitioner has submitted that the petitioner has already withdrawn the complaint filed before the Consumer Disputes Redressal Forum, Ahmedabad City which was filed for the same prayers. The order passed by the Consumer Forum allowing the petitioner to withdraw the complaint is directed to be taken on record.

3. Under the circumstances, the present order shall be subject to ultimate outcome of the Special Leave to Appeals (Civil) Nos. 9876-9878 of 2004 and S.L.P. (Civil) No. 10205 of 2004 pending before the Hon'ble Supreme Court. Rule is made absolute to the aforesaid extent with no order as to costs.

{ M.R. Shah, J. }

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